

# Educational Surrogate Parent Referral

Rhode Island Department of Children, Youth and Families

**Policy: 700.0000**

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The Department of Children, Youth, and Families (DCYF) recognizes the need to adhere to an educational program which meets the special needs of any child with a disability in the care of DCYF. Sometimes the parent is unable or unwilling to ensure that these educational needs are being met. In such cases, DCYF bears the primary responsibility of identifying and referring children with a disability or children suspected of having a disability to the Department of Education (DOE) for the appointment of an Educational Surrogate Parent. The Educational Surrogate Parent represents the child in all educational matters and advocates for the child's educational needs. For a child in the care and/or custody of DCYF, no DCYF staff person shall at any time sign the child's Individualized Educational Program (IEP). Under federal regulations, only the Educational Surrogate Parent is authorized to sign the IEP in place of the natural parent. For children in the care and/or custody of DCYF, the Educational Surrogate Parent is allowed to participate in the educational component of the Case Plan Review.

DCYF is responsible for providing a process of identification of children with disabilities or children suspected of having disabilities, as defined by the RI Board for Elementary and Secondary Education Regulations Governing the Education of Children with Disabilities, when these children are in the care of DCYF. The Regulations Governing the Education of Children with Disabilities defines a child with a disability as:

"Child with a disability means a child aged three to 21, evaluated in accordance 300.530-300-536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, spectrum disorder, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services."

In most cases, an educational surrogate parent is appointed by the Department of Education for all children with disabilities who are placed in DCYF care under temporary or permanent custody on the basis of a petition alleging dependency, neglect, and/or abuse. This appointment is mandated by a Federal District Court decree, is controlled through state departmental interagency agreements, and complies with federal statutes and rules and State Board of Regents regulations. In contracts for voluntary placement of disabled children and for disabled children placed in DCYF custody for placement on the basis of a Wayward/Delinquent petition, an educational surrogate parent may be appointed in specific circumstances as stated in the procedures below.

## Related Procedures

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## Appointment of an Educational Surrogate Parent for Children with Disabilities

### **Procedure From Policy 700.0000: Educational Surrogate Parent Referral**

- A. RIGL 33-15-1.2 - Guardianship for education -- Educational surrogate parents for children with disabilities under the care and custody of the State. Whenever the Family Court places a child in the care and custody of the state, it shall enter an order indicating whether the parents or guardian are to be allowed to continue to make educational decisions on behalf of said child. At the same time, the Family Court shall make a factual determination pursuant to Section 16-64-1.2(a) as to the said residence of the child's parent(s) or guardian on the date that the child is placed in the care and custody of the state, in accordance with RIGL 33-15-1.2.
- B. If the Family Court enters an order vesting the right to control a child's education with a state agency, and if the court or the state agency finds that the child is in need of special education, or that the child is suspected of being in need of special education, the court or state agency shall request the commissioner of education to appoint an educational surrogate parent to exercise the child's due process rights under applicable state and federal special education laws and regulations.

## Educational Surrogate Parent Referral - Identification

### **Procedure From Policy 700.0000: Educational Surrogate Parent Referral**

- A. Identification of children with disabilities or children suspected of having a disability is completed by the primary service worker within the time frame of the formulation of the initial Case Plan/Agreement (DCYF #032). (Please refer to Policy 500.0075 Case Plan/Agreement.)
- B. For children with disabilities or children suspected of having a disability who are active with the Department functioning under an existing Case Plan/Agreement and who are now being placed out of the parental home, identification is made within thirty (30) days of the child's change in legal/placement status.
- C. Identification necessitates that the primary service worker immediately obtain an Authorization to Obtain or Release Confidential Information (DCYF#007) and make every effort to:
  - 1. Secure school department records and evaluation material which will aid in the identification of a child with a disability. This material includes but is not limited to achievement testing, psychological testing, academic records, and the IEP.
  - 2. Secure any other pertinent data from the school department and/or other private and public agencies which can be used for identification purposes. This includes but is not limited to medical records, mental health records, and social behavioral profiles.
  - 3. If the disability is suspected but not confirmed, refer the child for evaluation and/or testing to the local school system in which the child is enrolled. A referral for an educational surrogate parent for those children who meet the criteria defined in the procedures below should be made by submitting the Education Information Sheet (DCYF #061) to the Educational Services Coordinator. For those children, an educational surrogate parent has to be appointed in order to authorize testing.
- D. Information regarding the referral and appointment of an educational surrogate parent must be entered by the primary service worker in the educational record in RICHIST.

## Educational Surrogate Parent Referral Process -Based Upon Legal Status

### Procedure From Policy 700.0000: Educational Surrogate Parent Referral

- A. If the Family Court enters an order under RIGL 33-15-1.1 vesting educational decision making with DCYF, and the child is identified as having a disability or suspected of having a disability, DCYF must make a referral for an educational surrogate parent to the DOE. The Education Information Sheet (DCYF# 061) with attached documentation of the court decision should be submitted to the Educational Services Coordinator for processing to DOE.
- B. In the absence of a Family Court order pursuant to RIGL 33-15-1.1, the following conditions apply for children ages 30 months to 21 years identified or suspected of having a disability.
  1. Abuse/Neglect/Dependency Petition - If DCYF has temporary or permanent custody on a petition of abuse, neglect and/or dependency, the Education Information Sheet (DCYF#061) should be submitted to the Educational Services Coordinator for processing to DOE.
    - a. For children placed outside the home on an abuse/neglect petition, the DOE will appoint an educational surrogate parent unless DCYF strongly recommends that parent(s) continues to make educational decisions.
    - b. For children placed outside the home on a dependency petition, DOE will notify the parent(s) that an educational surrogate parent will be appointed unless the parent(s) expresses a desire to remain involved within ten days.
    - c. When a child is in the custody of DCYF pursuant to a petition for dependency, neglect, or abuse, and said child is placed with his or her natural parent(s), DCYF shall so notify DOE via the Educational Services Coordinator and DCYF #061. DOE shall then advise the parent(s) that he/she retains rights to make educational decisions. DOE will send information on training and educational advocacy. If the parent(s) subsequently fails to be involved in the child's education, DCYF can document lack of involvement, and request an educational surrogate parent appointment.
  2. Wayward/Delinquent Petition
    - a. If DCYF has temporary or permanent custody on a wayward/delinquent petition and the child is placed with the parent(s), the child is not eligible for the appointment of an educational surrogate parent.
    - b. If the child is placed outside the home on a wayward/delinquent petition, the parent(s) should be invited to participate in case planning. If the parent(s) participates, no referral is made. If the parent fails to participate in case planning and/or educational planning for the child, a referral for an educational surrogate parent should be submitted documenting lack of parental involvement. Additionally, DCYF shall inform DOE if the parent(s) once active, subsequently ceases to be involved in decisions regarding the child's education, and, in such case, DCYF shall request that an educational surrogate parent be appointed for the child.
    - c. If the child is placed at the Rhode Island Training School, the parent(s) should be invited to the individual treatment plan (ITP) process. If the parent fails to participate, a referral for an educational surrogate parent should be submitted. If a child with a disability is already active with the Department upon his/her admission to the Training School and already has an assigned educational surrogate parent, that individual shall continue in this role while the child is in residence.
  3. Voluntary Placements - If a child with a disability or who is suspected of having a disability is being placed with DCYF voluntarily, the primary service worker will, at the time of signature by the parent(s), ask the parent(s) if he/she will continue to make educational decisions for the child and so indicate that decision on the Voluntary Application/ Authorization/Consent for Placement of Children (DCYF# 023).
    - a. If the parent(s) indicates he/she wishes to continue to make educational decisions, it is his/her right. No referral for an educational surrogate parent is necessary.

- b. If the parent(s) indicates he/she does not wish to continue to make educational decisions, the primary service worker will get a signed Educational Participation Agreement (DCYF#062) and attach it to the Voluntary Application/Authorization/Consent for Placement of Children (DCYF#023). (Please refer to Policy 700.0015 - Voluntary Placement.)
- c. The primary service worker will follow the procedures for referral for educational surrogate parent as outlined above and attach a copy of the Educational Participation Agreement (DCYF# 062) to the Educational Information Sheet (DCYF #061).

## Educational Surrogate Parent Referral - Confirmation and Monitoring of Educational Surrogate Parent Appointment

### **Procedure From Policy 700.0000: Educational Surrogate Parent Referral**

- A. If the primary service worker has generated a referral for an educational surrogate parent and he/she has not received confirmation of an appointment within 21 days from referral, the worker shall contact the DCYF Educational Services Coordinator to check on the status of the appointment:
  - 1. The DCYF Educational Services Coordinator shall contact the DOE to check on the status of the referral. If the referral has been denied, the reason for the denial shall be requested by the Educational Services Coordinator.
  - 2. The DCYF Educational Services Coordinator shall keep a record (DCYF #141) of all referrals for educational surrogate parent, the date of the referral, and the stated reason for the denial of any appointments by the DOE.
- B. The DOE has responsibility to monitor the performance of educational surrogate parents as to the quality of representation. It is, however, the responsibility of DCYF to assist in this process by informing the DOE if a problem arises with the level of representation provided by an educational surrogate parent:
  - 1. The primary service worker shall contact the DCYF Educational Services Coordinator to inform him/her of the problem.
  - 2. The Educational Services Coordinator shall contact the DOE in writing outlining the issues and requesting a written response from DOE outlining its plan for intervention.